



A PROSECUTOR'S GUIDE TO UTAH'S WHITE COLLAR CRIME OFFENDER REGISTRY

Protecting the Investor – Protecting the Market

November 13, 2015

By David N. Sonnenreich

Deputy Attorney General

Office of the Attorney General of the State of Utah

CLE MATERIALS

1. Utah's White Collar Crime Offender Registry at a Glance
2. Comparison of White Collar Crime Registry to Sex and Kidnapping Registry
3. Suggested Plea Agreement Language
4. Form 105-3-4 – Prosecutor's Form
5. Form 105-3-5 – Offender's Form
6. HB 378 – White Collar Crime Registry (Enrolled Copy)
7. Utah Administrative Code Rule R105-3 White Collar Crime Registry (9/15 Version)

Disclaimer: The views stated herein and during the lecture are those of the speaker, are general in nature and intended for educational purposes only, and are not binding with regard to any legal dispute. They are not necessarily the views of Utah Attorney General Sean D. Reyes, the Office of the Attorney General of the State of Utah, or the State of Utah.

Utah's White Collar Crime Offender Registry at a Glance

- Created by HB 378 – White Collar Crime Registry
- Codified as Utah Code Title 77, Chapter 42 – White Collar Crime Offender Registry
- Administered by the Office of the Attorney General of the State of Utah
- Proposed Utah Administrative Code Rule R105-3 White Collar Crime Registry

Who Goes on the Registry?

A person who is convicted of a second degree felony after December 31, 2005 under:

1. Utah Code §§ 61-1-1 or 61-1-2, securities fraud;
2. Utah Code § 76-6-405, theft by deception;
3. Utah Code § 76-6-513, unlawful dealing of property by fiduciary;
4. Utah Code § 76-6-521, fraudulent insurance;
5. Utah Code § 76-6-1203, mortgage fraud;
6. Utah Code § 76-10-1801, communications fraud; or
7. Utah Code § 76-10-1903, money laundering.

Note: Utah Code § 76-10-1601 *et seq.*, pattern of unlawful activity, currently is not included

What Information Goes on the Registry?

- A recent photograph, physical description, date of birth, aliases
- Registerable crimes of which the person has been convicted – even if on appeal
- “A description of the offender’s targets” – prepared by prosecutors
- “Any other relevant identifying information as determined by the attorney general”

How Long Does an Offender Remain on the Registry?

- First Offense = 10 years; Second Offense = 10 additional years; Third Offense = Life
- Can be removed earlier via a court petition, notice, and hearing process – complex
- Can be removed by the Attorney General’s Office if:
 - The offense is expunged or reduced below a second degree felony, and
 - The offender has paid all court ordered restitution to victims

What Safeguards Help to Ensure the Accuracy of the Registry?

1. A prosecutor fills out a form, which includes a description of the offender’s targets;
2. The offender is asked to fill out a form verifying the information; and
3. Proposed Rule R105-3 allows for an informal adjudicative procedure to correct errors.

When Will the Registry Become Operational and Where Will it be Located?

- The target date for the Registry to become operational is the end of 2015 or early 2016
- The Registry will be accessed from a link located at www.attorneygeneral.utah.gov

Sex Offender and White Collar Crime Registry Comparison

	Sex & Kidnap Offender	White Collar Crime
Scope of included offenses	Covers over 27 offenses	Only applies to 7 offenses
Level of included offenses	“attempting, soliciting, or conspiring to commit any felony offense listed”	Only applies to 2nd Degree felony convictions
Convictions in other jurisdictions	“substantially equivalent” offenses in other jurisdictions, including federal, military, states, and some international	Limited to convictions in Utah state court
Nexus to Utah	Based on offender spending 10 days per year in Utah	Based on conviction in Utah state court
Offender registration	Annual and extensive – phone, internet, car, employment, volunteer work, school, professional licenses, DNA ...	Short verification form and occasional additional information as requested by the Attorney General’s Office
Government registration	Extensive registration and cross-agency notification	Short form reviewed by a prosecutor
Length for first offense	Up to lifetime registration	10 years
Removal	May petition court under some circumstances	May petition court or use short process with the Attorney General’s Office – either way, paying restitution is required
Protection of offender	None	Anti-harassment provisions
Penalties for Non-registration	3 rd Degree Felony or Class A misdemeanor, plus extended registration period	Not explicitly stated – may violate probation or other laws

SUGGESTED PLEA AGREEMENT LANGUAGE

IN WHITE COLLAR CASES WHERE REGISTRATION IS REQUIRED

I am aware that by entering this plea I am pleading guilty to an offense that requires me to register for placement on the Utah White Collar Crime Offenders Registry. I agree that I will register with the Utah Attorney General's Office within 30 days of the entry of this plea and that I will maintain compliance thereafter in accordance with Utah Code sections 77-42-101 et. seq., and Utah Administrative Code Rule R105-3.

IN WHITE COLLAR CASES WHERE REGISTRATION IS NOT REQUIRED (Third Degree Felonies, Pattern of Unlawful Activity, etc. ...)

I am aware that certain offenders who commit financial crimes may be required to register for placement on the Utah White Collar Crime Offenders Registry. I am aware that at the present time, the statute and rules do not require me to register based upon the offenses to which I am pleading guilty. However, I acknowledge that any representations made to me that I will not need to register only reflect the current status of the law and do not constitute a representation that the law will not change, or a promise that I will not need to register if the law does change. I agree that if the law changes and requires me to register based upon any offense to which I am now pleading guilty, I will comply with all requirements for registration.

NOTE: If you have suggestions for improvements to this language, please contact David Sonnenreich at dsonnenreich@utah.gov or 801-366-0132.

FORM 105-3-4: UTAH WHITE COLLAR CRIME REGISTRY
INFORMATION TO BE CERTIFIED BY THE PROSECUTOR

Name of Offender: _____

Known Aliases: _____

Last Known Address: _____

Description: DOB: ____/____/____ Height: ____ feet ____ inches Weight: ____ pounds

Eye Color: _____ Hair Color: _____ Other Identifying Characteristics: _____

Case Number: _____ Date of Conviction: ____/____/20____

Convicted by: ☐ Plea ☐ Jury Verdict ☐ Bench Trial

Qualifying Second Degree Felony Convictions: _____,
_____, _____, _____.

Sentencing is: ☐ Pending ☐ Completed, as of ____/____/20____

Appeal Status: ☐ No Appeal ☐ Appeal filed ____/____/20____

Description (without names) of typical characteristics of the victim's targets, including any known affinities – such as a common religion, ethnicity, non-English language, profession, trade, physical characteristic (e.g. a shared disability or health condition), age, political affiliation or concern, charitable interest, hobby, or avocation – that the Offender used in order to select victims, build trust with victims, or otherwise to perpetrate the crimes upon them: _____
_____.

Businesses used by the Offender in the commission of the crimes:

Name: _____ Address: _____

Name: _____ Address: _____

~~~~~ CERTIFICATON ~~~~~

Please attach the following documents by PDF:

1. The Information;
2. The Affidavit of Probable Cause;
3. The Plea Agreement, if the case was resolved through a plea;
4. The court minute entry showing the conviction; and
5. The booking photograph and booking sheet for the Offender, if one is publicly available.

Information about the Prosecutor who is completing this form:

Name: \_\_\_\_\_ Agency: \_\_\_\_\_

Address: \_\_\_\_\_ Phone #: \_\_\_\_\_

I hereby certify that the foregoing information is accurate, to the best of my knowledge:

Signed: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/20\_\_\_\_

FORM 105-3-5: UTAH WHITE COLLAR CRIME REGISTRY  
INFORMATION TO BE CERTIFIED BY THE POTENTIAL OFFENDER

Name: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/20\_\_\_\_  
Address: \_\_\_\_\_ Phone #: \_\_\_\_\_  
Email: \_\_\_\_\_

I understand that the Utah Attorney General's Office is evaluating whether I should be listed as an Offender in the Utah White Collar Crime Registry. I have reviewed Form 105-3-4 Information to be Provided by the Prosecutor and

☐ I believe that the information provided by the prosecutor is accurate and complete

☐ I believe that the information provided by the prosecutor is not complete and accurate for the following reasons:

☐ I am not the person who was convicted of the crimes listed. Explain:

☐ I was not convicted of a second degree felony for any of the offenses listed in Utah Code section 77-42-105. Explain:

☐ I am eligible to be excluded from the registry under Utah Code section 77-42-106(3). Explain: \_\_\_\_\_

☐ I am a first offender, and more than 10 years have elapsed since my conviction. Explain: \_\_\_\_\_

☐ Specific information is inaccurate, as follows: \_\_\_\_\_

☐ The following information needs to be added to the form to make it complete: \_\_\_\_\_

You may provide more detailed answers, if necessary, on a separate page. Please provide any documentation necessary to establish any statements made.

I have made an appointment to have my photograph taken on \_\_\_\_\_.

I hereby certify that the foregoing information is accurate, to the best of my knowledge:

Signed: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/20\_\_\_\_

# UTAH WHITE COLLAR CRIME OFFENDER REGISTRY

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: Mike K. McKell

5 Senate Sponsor: Curtis S. Bramble

6

7 LONG TITLE

8 General Description:

9 This bill modifies the Utah Code of Criminal Procedure to include a registry for persons  
10 who commit specified white collar crimes.

11 Highlighted Provisions:

12 This bill:

13 ▶ authorizes the Office of the Attorney General to develop, operate, and maintain the  
14 Utah White Collar Crime Offender Registry website;

15 ▶ provides the manner and process by which the Office of the Attorney General  
16 disseminates information from the Utah White Collar Crime Offender Registry  
17 website to the public, including the type of information that will be provided;

18 ▶ provides the offenses for which a person must be registered with the Utah White  
19 Collar Crime Offender Registry website;

20 ▶ provides that offenders who were convicted of the specified offenses between  
21 December 31, 2005, and the time this bill is enacted will not be placed on the Utah  
22 White Collar Crime Offender Registry if they:

23 • have complied with all court orders;  
24 • have paid all restitution claims; and  
25 • have not been convicted of any other offenses for which registration would be  
26 required;

27 ▶ provides the duration for which offenders will be placed on the Utah White Collar  
28 Crime Offender Registry;

29 ▶ provides rulemaking authority for the Office of the Attorney General to implement  
30 the Utah White Collar Crime Offender Registry; and

31 ▶ provides the process and conditions under which a person may petition to have his  
32 or her name and information removed from the Utah White Collar Crime Offender  
33 Registry.

34 Money Appropriated in this Bill:

35 None

36 Other Special Clauses:

37 None

38 Utah Code Sections Affected:

39 AMENDS:

40 76-8-504.6, as last amended by Laws of Utah 2010, Chapter 283

41 ENACTS:

42 77-42-101, Utah Code Annotated 1953

43 77-42-102, Utah Code Annotated 1953

44 77-42-103, Utah Code Annotated 1953

45 77-42-104, Utah Code Annotated 1953

46 77-42-105, Utah Code Annotated 1953

47 77-42-106, Utah Code Annotated 1953

48 77-42-107, Utah Code Annotated 1953

49 77-42-108, Utah Code Annotated 1953

50

51 Be it enacted by the Legislature of the state of Utah:

52 Section 1. Section 76-8-504.6 is amended to read:

53 **76-8-504.6. False or misleading information.**

54 (1) A person is guilty of a class B misdemeanor if the person, not under oath or  
55 affirmation, intentionally or knowingly provides false or misleading material information to:

56 (a) an officer of the court for the purpose of influencing a criminal proceeding; or

57 (b) the Bureau of Criminal Identification for the purpose of obtaining a certificate of  
58 eligibility for:

59 (i) expungement[.]; or

60 (ii) removal of the person's name from the White Collar Crime Registry created in Title  
61 77, Chapter 42, Utah White Collar Crime Offender Registry.

62 (2) For the purposes of this section "officer of the court" means:

63 (a) prosecutor;

64 (b) judge;

65 (c) court clerk;

66 (d) interpreter;

67 (e) presentence investigator;

68 (f) probation officer;

69 (g) parole officer; and

70 (h) any other person reasonably believed to be gathering information for a criminal  
71 proceeding.

72 (3) This section does not apply under circumstances amounting to Section 76-8-306 or  
73 any other provision of this code carrying a greater penalty.

74 Section 2. Section 77-42-101 is enacted to read:

75

## CHAPTER 42. UTAH WHITE COLLAR CRIME OFFENDER REGISTRY

76 **77-42-101. Title.**

77 This chapter is known as the "Utah White Collar Crime Offender Registry."

78 Section 3. Section 77-42-102 is enacted to read:

79 **77-42-102. Definitions.**

80 As used in this chapter:

81 (1) "Attorney general" means the Utah attorney general or a deputy attorney general.

82 (2) "Bureau" means the Bureau of Criminal Identification of the Department of Public  
83 Safety established in Section 53-10-201.



84 (3) "Business day" means a day on which state offices are open for regular business.

85 (4) "Certificate of eligibility" means a document issued by the Bureau of Criminal  
86 Identification stating that the offender has met the requirements of Section 77-42-108.

87 (5) "Offender" means an individual required to register as provided in Section  
88 77-42-105.

89 (6) "Register" means to comply with the requirements of this chapter and rules of the  
90 Office of the Attorney General made under this chapter.

91 Section 4. Section 77-42-103 is enacted to read:

92 **77-42-103. Duties.**

93 (1) The attorney general shall:

94 (a) develop and operate a system to collect, analyze, maintain, and disseminate  
95 information on offenders; and

96 (b) make information listed in Section 77-42-104 available to the public.

97 (2) Any attorney general, county attorney, or district attorney shall, in the manner  
98 prescribed by the attorney general, inform the attorney general of a person who is convicted of  
99 any of the offenses listed in Section 77-42-105 within 45 business days.

100 (3) The attorney general shall:

101 (a) provide the following additional information when available:

102 (i) the crimes for which the offender has been convicted, noting cases in which the  
103 offender is still awaiting sentencing or has appealed the conviction;

104 (ii) a description of the offender's targets; and

105 (iii) any other relevant identifying information as determined by the attorney general;

106 (b) maintain the Utah White Collar Crime Offender Registry website; and

107 (c) ensure that information is entered into the offender registry in a timely manner.

108 Section 5. Section 77-42-104 is enacted to read:

109 **77-42-104. Utah White Collar Crime Offender Registry -- Attorney general to**  
110 **maintain.**

111 (1) The attorney general shall maintain the Utah White Collar Crime Offender Registry  
112 website on the Internet, which shall contain a disclaimer informing the public that:

113 (a) the information contained on the website is obtained from public records and the  
114 attorney general does not guarantee the website's accuracy or completeness;

115 (b) members of the public are not allowed to use the information to harass or threaten  
116 offenders or members of their families; and

117 (c) harassment, stalking, or making threats against offenders or their families is  
118 prohibited and may violate Utah criminal laws.

119 (2) The Utah White Collar Crime Offender Registry website shall be indexed by the  
120 surname of the offender.

121 (3) The attorney general shall construct the Utah White Collar Crime Offender Registry  
122 website so that before accessing registry information, users must indicate that they have read  
123 and understand the disclaimer and agree to comply with the disclaimer's terms.

124 (4) Except as provided in Subsection (6), the Utah White Collar Crime Offender  
125 Registry website shall include the following registry information:

126 (a) all names and aliases by which the offender is or has been known, but not including  
127 any online or Internet identifiers;

128 (b) a physical description, including the offender's date of birth, height, weight, and eye

129 and hair color;  
130 (c) a recent photograph of the offender; and  
131 (d) the crimes listed in Section 77-42-105 of which the offender has been convicted.  
132 (5) The Office of the Attorney General and any individual or entity acting at the request  
133 or upon the direction of the attorney general are immune from civil liability for damages and  
134 will be presumed to have acted in good faith by reporting information.  
135 (6) The attorney general shall redact the names, addresses, phone numbers, Social  
136 Security numbers, and other information that, if disclosed, specifically identifies individual  
137 victims.

138 Section 6. Section 77-42-105 is enacted to read:

139 **77-42-105. Registerable offenses.**

140 A person shall be required to register with the Office of the Attorney General for a  
141 conviction of any of the following offenses as a second degree felony:

- 142 (1) Section 61-1-1 or Section 61-1-2, securities fraud;
- 143 (2) Section 76-6-405, theft by deception;
- 144 (3) Section 76-6-513, unlawful dealing of property by fiduciary;
- 145 (4) Section 76-6-521, fraudulent insurance;
- 146 (5) Section 76-6-1203, mortgage fraud;
- 147 (6) Section 76-10-1801, communications fraud; and
- 148 (7) Section 76-10-1903, money laundering.

149 Section 7. Section 77-42-106 is enacted to read:

150 **77-42-106. Registration of offenders -- Utah White Collar Crime Offender**  
151 **Registry.**

- 152 (1) An offender who has been convicted of any offense listed in Section 77-42-105  
153 shall be on the Utah White Collar Crime Offender Registry for:
- 154 (a) a period of 10 years for a first offense;
  - 155 (b) a second period of 10 years for a second conviction under this section; and
  - 156 (c) a lifetime period if convicted a third time under this section.
- 157 (2) Except as provided in Subsection (3), an offender who has been convicted of any  
158 offense listed in Section 77-42-105 after December 31, 2005, shall register with the attorney  
159 general to be included in the Utah White Collar Crime Offender Registry.
- 160 (3) An offender is not required to register as provided in Subsection (2) if the offender:
- 161 (a) has complied with all court orders at the time of sentencing;
  - 162 (b) has paid in full all court-ordered amounts of restitution to victims; and
  - 163 (c) has not been convicted of any other offense for which registration would be  
164 required.

165 Section 8. Section 77-42-107 is enacted to read:

166 **77-42-107. Department and agency requirements.**

- 167 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
168 attorney general shall make rules necessary to implement this chapter, including:
- 169 (a) the method for dissemination of registry information; and
  - 170 (b) instructions to the public regarding acceptable use of the information.
- 171 (2) Any information regarding the identity or location of a victim may be redacted by  
172 the attorney general from information provided under Subsection 77-42-104(6).

173 Section 9. Section 77-42-108 is enacted to read:

174 **77-42-108. Removal from the Utah White Collar Crime Offender Registry.**

175 (1) An offender may petition the court where the offender was convicted of the offense  
176 for which registration with the Utah White Collar Crime Offender Registry is required, for an  
177 order to remove the offender from the Utah White Collar Crime Offender Registry, if:

178 (a) five years have passed since the completion of the offender's sentence;

179 (b) the offender has successfully completed all treatment ordered by the court or the  
180 Board of Pardons and Parole relating to the conviction;

181 (c) (i) the offender has not been convicted of any other crime, excluding traffic  
182 offenses, as evidenced by a certificate of eligibility issued by the bureau; and

183 (ii) as used in this section, "traffic offense" does not include a violation of Title 41,  
184 Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

185 (d) the offender has paid all restitution ordered by the court;

186 (e) notice has been delivered to the victims and the office that prosecuted the offender;  
187 and

188 (f) the offender has not been found to be civilly liable in any case in which fraud,  
189 misrepresentation, deceit, breach of fiduciary duty, or the misuse or misappropriation of funds  
190 is an element.

191 (2) (a) (i) An offender seeking removal from the White Collar Crime Offender Registry  
192 shall apply for a certificate of eligibility from the bureau.

193 (ii) An offender who intentionally or knowingly provides any false or misleading  
194 information to the bureau when applying for a certificate of eligibility is guilty of a class B  
195 misdemeanor and subject to prosecution under Section 76-8-504.6.

196 (iii) Regardless of whether the offender is prosecuted, the bureau may deny a certificate  
197 of eligibility to anyone providing false information on an application under this Subsection (2).

198 (b) (i) The bureau shall check the records of governmental agencies, including national  
199 criminal databases, to determine whether an offender is eligible to receive a certificate of  
200 eligibility under this section.

201 (ii) If the offender meets all of the criteria under Subsections (1)(a) through (d), the  
202 bureau shall issue a certificate of eligibility to the offender which shall be valid for a period of  
203 90 days from the date the certificate is issued.

204 (c) (i) The bureau shall charge an application fee for the certificate of eligibility in  
205 accordance with the process in Section 63J-1-504.

206 (ii) The fee shall be paid at the time the offender submits an application for a certificate  
207 of eligibility to the bureau.

208 (iii) If the bureau determines that the issuance of a certificate of eligibility is  
209 appropriate, the bureau shall issue to the offender a certificate of eligibility at no additional  
210 charge.

211 (d) Funds generated under this Subsection (2) shall be deposited in the General Fund as  
212 a dedicated credit by the department to cover the costs incurred in determining eligibility.

213 (3) The offender shall:

214 (a) file with the court the following information:

215 (i) the petition;

216 (ii) the original information;

217 (iii) the court docket; and

218 (iv) an affidavit certifying that the offender is in compliance with the provisions of

219 Subsection (1); and  
220 (b) deliver a copy of the petition to the office of the prosecutor.  
221 (4) (a) Upon receipt of a petition for removal from the Utah White Collar Crime  
222 Offender Registry, the office of the prosecutor shall provide notice of the petition by first-class  
223 mail to the victims at the most recent addresses of record on file.  
224 (b) The notice shall:  
225 (i) include a copy of the petition for removal from the registry;  
226 (ii) state that the victim has a right to object to the removal of the offender from the  
227 registry; and  
228 (iii) provide instructions for filing an objection with the court.  
229 (5) The office of the prosecutor shall provide the following, if available, to the court  
230 within 30 days after receiving the petition:  
231 (a) a presentence report;  
232 (b) any evaluation done as part of sentencing; and  
233 (c) any other information the office of the prosecutor feels the court should consider.  
234 (6) The victim may respond to the petition by filing a recommendation or objection  
235 with the court within 45 days after the mailing of the petition to the victim.  
236 (7) The court shall:  
237 (a) review the petition and all documents submitted with the petition; and  
238 (b) hold a hearing if requested by the office of the prosecutor or the victim.  
239 (8) When considering a petition for removal from the registry, the court shall consider  
240 whether the offender has paid all restitution ordered by the court or the Board of Pardons and  
241 Parole.  
242 (9) If the court determines that it is not contrary to the interests of the public to do so,  
243 the court may grant the petition and order removal of the offender from the registry.  
244 (10) If the court grants the petition, the court shall forward a copy of the order directing  
245 removal of the offender from the registry to the attorney general and the office of the  
246 prosecutor.  
247 (11) The office of the prosecutor shall notify the victims of the court's decision in the  
248 same manner as the notification required in Subsection (3)(a).  
249 (12) The attorney general shall remove an offender from the registry upon the offender  
250 providing satisfactory evidence to the attorney general that:  
251 (a) each conviction listed in Section 77-42-105 has either been expunged or reduced in  
252 degree below a second degree felony; and  
253 (b) the offender has paid all court-ordered restitution to victims.  
254

## **Utah Administrative Code Rule R105-3**

### **Utah White Collar Crime Registry**

#### **R105. Attorney General, Administration.**

#### **R105-3. White Collar Crime Registry.**

##### **R105-3-1. Purpose.**

The purpose of this rule is to establish procedures to efficiently administer the Utah White Collar Crime Offender Registry. These rules are made pursuant to the rulemaking authority granted by Utah Code Ann. Section 77-42-107(1).

##### **R105-3-2. Definitions.**

(1) Attorney General: The Attorney General of the State of Utah and any Assistant Attorney General.

(2) Attorney General's Office: The Office of the Attorney General of the State of Utah, and its employees acting within the scope of their employment.

(3) Conviction: A conviction occurs, for purposes of this Rule, as soon as a plea is entered and accepted by the court, or a trial concludes with a verdict of guilty. The Registry shall note cases in which an Offender has been convicted but is still awaiting sentencing or has appealed the conviction, so long as the appeal is pending.

(4) Dates: When a day of the month or a date that is specified in this rule falls on a weekend or an official state holiday, the deadline shall be the end of the next regular business day.

(5) Harassment: Harassment is any action that is designed to intimidate, humiliate, coerce, or threaten an individual, including stalking an individual. Persons who use the Registry are prohibited from harassing any Offender listed on the Registry, or any person related to any Offender. Persons who use the Registry are also prohibited from engaging in indirect harassing behavior against an Offender through harassing contact with any person who employs any Offender, any person who provides housing to any Offender, or any person who is a religious or spiritual advisor to any Offender. For example, a person using the Registry may not coerce or threaten a landlord in an effort to cause the landlord to cease renting to an Offender. However, it is not harassment for a person who uses the Registry to accurately inform any person that an Offender is listed on the Registry, or to provide information on the Registry to any person. It is not harassment for a person who uses the Registry to suggest, advise, or recommend to any person that they not invest money with an Offender, or that they take action to recover money they may have invested with an Offender.

(6) Offender: Any person who has been convicted of a crime listed in Section 77-42-105, who is required to register pursuant to Section 77-42-106(2) and who is not exempted from that requirement pursuant to Section 77-42-106(3).

(7) Presiding Officer: The initial Presiding Officer for administrative proceedings shall be the current Director of the Markets and Financial Fraud Division, unless otherwise designated by the Attorney General in a particular proceeding.

(8) Potential Offender: Any person whom the Attorney General has reason to believe may be an Offender, during the period of time when the Attorney General's Office is investigating whether the person qualifies for listing on the Registry.

(9) Prosecutor: Any Assistant Utah Attorney General, County Attorney, Assistant County Attorney, District Attorney, Assistant District Attorney, or other individual who is authorized by law to prosecute any of the offenses listed in Section 77-42-105. A law enforcement agency may designate any Prosecutor within the agency as the person responsible for fulfilling the requirements

of this Rule regarding any Offender or group of Offenders; in the absence of any such designation, it is the responsibility of the Prosecutor who obtained the conviction to comply with this Rule.

(10) Registry: The White Collar Crime Registry, as authorized by Utah Code Title 77, Chapter 42.

(11) Registry Coordinator: The Registry Coordinator is the person who is responsible for maintaining the Registry. The Attorney General shall designate a Registry Coordinator, whose name will be listed as part of the information about the Registry provided at <http://www.attorneygeneral.utah.gov>

(12) Repeat Offender: For purposes of Section 77-42-106(1) a person shall be deemed to have been convicted more than once and hence subject to being listed for additional time on the Registry only if all of the following conditions are met:

(a) Each conviction was the result of a separate legal proceeding;

(b) Each conviction is based upon factually distinct behavior, such as different fraudulent schemes affecting different investors;

(c) Although a person may be convicted in a single proceeding of having committed multiple offenses from among the list in Section 77-42-105 or may be convicted of multiple counts of the same offense, such a proceeding still constitutes a single conviction; and

(d) It is irrelevant whether the events for later convictions take place before or after earlier convictions, so long as they constitute separate factually distinct behavior.

(13) Review Officer: A Review Officer is an individual who makes initial determinations concerning whether a Potential Offender should be listed as an Offender on the Registry, and whether an Offender who is listed on the Registry should be removed from the Registry. The Attorney General shall designate one or more Review Officers from time to time. Individuals may obtain the name of the Review Officer in a particular case by sending an email to [whitecollar@utah.gov](mailto:whitecollar@utah.gov), or by checking the information about the Registry provided at <http://www.attorneygeneral.utah.gov>, or by mailing a written request to White Collar Crime Registry Coordinator, Office of the Attorney General, PO Box 142320, Salt Lake City, UT 84114-2320.

(14) Victim: Any person identified as a victim, including persons to whom restitution is owed regardless of whether they testified or were identified at trial.

### **R105-3-3. Operation of the Registry.**

(1) The Registry shall be maintained and updated by the Registry Coordinator.

(2) All communications concerning the operation of the Registry or the accuracy of information contained in the Registry, and all forms, information, and notices that are permitted or required to be sent to the Attorney General's Office under this Rule shall be sent to the Registry Coordinator by email to [whitecollar@utah.gov](mailto:whitecollar@utah.gov) or by mail to White Collar Crime Registry Coordinator, Office of the Attorney General, PO Box 142320, Salt Lake City, UT 84114-2320.

(3) All written communications from the Attorney General's Office to any Offender or Potential Offender shall be mailed to the likely best address in this order:

(a) The current address provided by the Offender or Potential Offender;

(b) The last known address provided by the Prosecutor; or

(c) Any other address discovered by the Attorney General's Office.

(4) The Attorney General's Office may communicate with any person by email instead of mail if that person has provided the Attorney General's Office with an email address and has either stated in writing that use of the email address instead of mail is acceptable, or has used the [whitecollar@utah.gov](mailto:whitecollar@utah.gov) email address to communicate with the Attorney General's Office.

(5) The Registry Coordinator shall have authority to determine that Potential Offenders are Offenders, to list Offenders on the Registry (including determining what information will be

included in the listing), to correct errors in the Registry, to remove an Offender from the Registry, and to take any other acts necessary to maintain the Registry. The Registry Coordinator shall work with the Review Officer or Officers in making these determinations.

(6) The Registry Coordinator may seek advice and assistance from the Attorney General or anyone employed by the Attorney General's Office in exercising the authority granted under this Rule.

(7) The Attorney General's Office will generally update the Registry monthly on or before the 15th day of the month. Updates will include changes that have received final approval from the Registry Coordinator prior to the 1st day of the month. Any changes receiving approval after the 1st day of the month will generally be included in the following month's update.

(8) The Registry can be accessed from this URL: <http://www.attorneygeneral.utah.gov>.

(9) All forms referenced in this Rule can be obtained from this URL: <http://www.attorneygeneral.utah.gov>.

#### **R105-3-4. Information to be Supplied by the Prosecutor.**

(1) Within 45 business days of any conviction of an Offender, the Prosecutor shall provide the Registry Coordinator with the information requested on form 105-3-4, to the extent that such information is available to the Prosecutor. The completed form and attached documentation may be emailed in PDF format to: [whitecollar@utah.gov](mailto:whitecollar@utah.gov) or mailed to White Collar Crime Registry Coordinator, Office of the Attorney General, PO Box 142320, Salt Lake City, UT 84114-2320.

(2) The Attorney General finds all of the information regarding the Offender requested on Form 105-3-4 to be potentially relevant identifying information, however the Attorney General reserves the right not to post information provided on that form if the Attorney General determines that it is not helpful for identifying an Offender in a particular case.

(3) The Prosecutor shall provide additional information to the Registry Coordinator or any Review Officer upon request.

#### **R105-3-5. Information to be Supplied by the Offender or Potential Offender.**

(1) When requested by the Attorney General's Office, an Offender or Potential Offender shall provide the designated Review Officer with the information requested on Form 105-3-5 located at this URL: <http://www.attorneygeneral.utah.gov>. The form and attached documentation may be emailed in PDF format to: [whitecollar@utah.gov](mailto:whitecollar@utah.gov) or mailed to White Collar Crime Registry Coordinator, Office of the Attorney General, PO Box 142320, Salt Lake City, UT 84114-2320.

(2) Each Offender or Potential Offender shall provide current address and phone number contact information to the Attorney General's Office, and shall update that information within 30 days of a change of address or phone number.

(3) When requested, an Offender or Potential Offender shall provide the Attorney General's Office with a photograph that is in the format required for a passport photograph.

(4) When requested, an Offender or Potential Offender shall appear at the Attorney General's Office in order to have his or her physical characteristics verified or his or her photograph taken.

(5) An Offender or Potential Offender shall provide such additional information as may be requested by the Attorney General's Office at any time in order to either identify any Offender or Potential Offender (including a convicted co-conspirator) or to determine whether any Offender or Potential Offender should be listed on (or remain listed on) the Registry.

#### **R105-3-6. Adding an Offender to the Registry -- Notice to the Offender.**

(1) When the Attorney General's Office learns of a Potential Offender from any source, it shall attempt to contact the Prosecutor and ask the Prosecutor to provide the information requested

on Form 105-3-4.

(2) When the Attorney General's Office has received Form 105-3-4 with attachments, the Attorney General may determine from the information provided that the Potential Offender is an Offender who qualifies for listing on the Registry. Alternatively the Attorney General's Office may forward the Prosecutor's Form 105-3-4 to the Potential Offender with the Prosecutor's name, contact information and certification redacted.

(3) If requested by the Attorney General, the Potential Offender shall provide the information requested on Form 105-3-5, and shall provide any additional information requested by the Attorney General's Office.

(4) If the Attorney General's Office determines that a Potential Offender is an individual who should be listed on the Registry as an Offender, the Attorney General shall provide written notice to the Potential Offender at least 15 days before the first day of the month in which the person is to be listed as an Offender.

#### **R105-3-7. Accuracy of the Registry.**

Any person may challenge the accuracy of any information contained in the Registry, may assert that an individual who is not listed in the Registry is a Potential Offender, or that an Offender listed in the Registry should be removed. Such challenges should be directed to the Registry Coordinator by sending an email to: [whitecollar@utah.gov](mailto:whitecollar@utah.gov) or mailing a letter to White Collar Crime Registry Coordinator, Office of the Attorney General, PO Box 142320, Salt Lake City, UT 84114-2320. An Attorney General's Office employee will typically respond within 30 days of receipt of the challenge, and will inform the individual whether the Registry Coordinator has approved or denied the requested change, and if approved, when the change will be incorporated into the Registry.

#### **R105-3-8. Removal of an Offender from the Registry by Passage of Time.**

(1) An Offender who believes that he or she qualifies for removal from the Registry due to the passage of time shall provide notice of the same to the Review Officer assigned to that Offender. To facilitate timely removal, such notice should be provided no more than 120 nor less than 60 days prior to the first date on which the Offender is eligible to be removed.

(2) The Review Officer shall review the notice and determine whether the Offender is eligible to be removed due to the passage of time. The Attorney General's Office may require the Offender to provide additional documentation and information prior to making that determination.

(3) If the Review Officer determines that the Offender is eligible to have his or her name removed, the Offender's name shall be removed by the Registry Coordinator as part of the next regularly scheduled monthly update of the Registry following the first date on which Review Officer makes that determination.

(4) If the Review Officer determines that the Offender is not eligible for removal from the Registry due to the passage of time, the Review Officer shall inform the Offender in writing and shall briefly explain the basis for that decision.

(5) The Review Officer shall decide whether the Offender is eligible for removal from the Registry within 60 days of receiving notice, unless the Review Officer believes that additional time is necessary to investigate, in which case the Review Officer shall provide the Offender with a written explanation of the reason why additional time is necessary and an estimate of the date by which a decision shall be rendered.

#### **R105-3-9. Removal of an Offender from the Registry by Court Order.**

(1) An Offender may be removed from the Registry by petitioning the court where the Offender was convicted, and following the procedure set forth in Subsections 77-42-108(1) through



(11).

(2) Once the Attorney General's Office has received a copy of the order directing removal, the Offender shall be removed by the Registry Coordinator as part of the next regularly scheduled monthly update of the Registry.

**R105-3-10. Removal of an Offender from the Registry by Direct Petition.**

(1) An Offender who believes that he or she qualifies for removal from the Registry under the provisions of Section 77-42-108(12) shall petition the Attorney General by submitting Form 105-3-9 and all required supporting documents to the Review Officer assigned to that Offender's case.

(2) The Review Officer shall review the petition and determine whether the Offender is eligible to be removed due to compliance with Section 77-42-108(12). The Attorney General's Office may require the Offender to provide additional documentation and information prior to making that determination.

(3) If the Review Officer determines that the Offender is eligible to have his or her name removed, the Offender's name shall be removed by the Registry Coordinator as part of the next regularly scheduled monthly update of the Registry following the first date on which The Review Officer makes that determination.

(4) If the Review Officer determines that the Offender is not eligible for removal from the Registry due to compliance with Section 77-42-108(12), the Review Officer shall inform the Offender in writing and shall briefly explain the basis for that decision.

(5) The Review Officer shall decide whether the Offender is eligible for removal from the Registry within 60 days of receiving the petition, unless the Review Officer believes that additional time is necessary to investigate, in which case the Review Officer shall provide the Offender with a written explanation of the reason why additional time is necessary and an estimate of the date by which a decision shall be rendered.

**R105-3-11. Administrative Procedures.**

(1) All administrative proceedings conducted in connection with this Rule shall be conducted by the Presiding Officer and shall be initially designated as informal proceedings pursuant to Section 63G-4-202. The Presiding Officer may convert any informal proceeding to a formal proceeding.

(2) In the event of an appeal of the Presiding Officer's decision, the Agency Designee to conduct the review shall be the Presiding Officer's immediate superior, unless otherwise designated by the Attorney General in a particular proceeding.

(3) The following parties may commence an administrative proceeding:

(a) The Attorney General may issue a Notice of Agency Action in order to enforce compliance with any requirement of this Rule.

(b) A Prosecutor, Offender, Potential Offender, or Victim may file a Request for Agency Action in order to challenge any action or inaction by the Attorney General under this Rule.

(c) No other person shall have a right to initiate an administrative proceeding under this Rule.

(4) Parties that receive a Notice of Agency Action shall respond in writing within 15 business days. Failure to respond in writing shall be deemed to be a grounds for default, and a default may be issued by the Presiding Officer. The Attorney General's Office may, in its discretion, file a response to any Request for Agency Action. Any such response shall be filed and mailed or emailed to the party requesting agency action within 15 business days of receipt of the Request for Agency Action. Other than as set forth herein, no additional pleadings or responses are permitted unless authorized by the Presiding Officer in a particular proceeding. The deadlines set

forth in this subsection may be extended by the Presiding Officer upon a showing of good cause by any party.

(5) The Presiding Officer shall decide the informal adjudicative proceeding on the basis of the Notice of Agency Action or Request for Agency Action, any attached documentation, and any responses submitted. No hearings are permitted unless the Presiding Officer converts the proceeding from an informal to a formal proceeding.

#### **R105-3-12. Unlawful Acts.**

(1) Failure to provide required information: An Offender who fails to provide any information required or requested under this Rule will be deemed to have not properly "Registered" as required by Section 77-42-105 and as defined in Section 77-42-102(6). An Offender's failure to register may be brought to the attention of a judge, prosecutor, Adult Probation and Parole officer, the Utah Board of Pardons, and others. In addition, a failure to provide information may violate various laws.

(2) Intentionally providing inaccurate information: An Offender who intentionally provides any false, misleading, or incomplete information required or requested pursuant to this Rule will be deemed to have not properly "Registered" as required by Section 77-42-105 and as defined in Section 77-42-102(6). Such a failure to register may be brought to the attention of a judge, prosecutor, Adult Probation and Parole officer, the Utah Board of Pardons, and others. In addition, intentionally providing false, misleading, or incomplete information may violate various laws.

(3) Using a link or other method to intentionally circumvent the disclaimer page: It is unlawful to intentionally circumvent the disclaimer page for the Registry so as to be able to access the Registry without agreeing to the disclaimer language. In particular, it is unlawful to imbed in a website, post, email, text (SMS), or otherwise use a URL that allows any person to circumvent the disclaimer page and go directly to the Registry. Such unlawful action may expose the responsible persons to criminal or civil liability, including injunctive and declaratory relief.

(4) Harassment of Offenders or their families: Harassment, as defined in this Rule, may violate criminal laws, and may be actionable under civil law, including injunctive and declaratory relief, depending upon the specific nature of the harassment.

**KEY: attorney general, white collar crime registry**

**Date of Enactment or Last Substantive Amendment: August 10, 2015**

**Authorizing, and Implemented or Interpreted Law: 77-42-107(1)**